

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;
Ashley E. Poling, Vice Chairwoman;
Mark Acton;
Ann C. Fisher; and
Robert G. Taub

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators
United States Postal Service
Contractual Bilateral Agreement – FY22-1 (MC2010-34)
Negotiated Service Agreement

Docket No. CP2022-30

ORDER APPROVING ADDITIONAL
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENT
WITH FOREIGN POSTAL OPERATOR – FY22-1

(Issued December 22, 2021)

I. INTRODUCTION

On December 3, 2021, the Postal Service filed a notice with the Commission pursuant to 39 C.F.R. § 3035.105 and Order No. 546,¹ stating that it has entered into an Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator (FPO).

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator – FY22-1, December 3, 2021 (Notice). *See also* Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

The Notice concerns the inbound portions of a competitive multi-product agreement referred to as the FPO-USPS Agreement FY22-1. Notice at 1. The Postal Service seeks to include the FPO-USPS Agreement FY22-1 within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

For the reasons discussed below, the Commission approves the addition of the FPO-USPS Agreement FY22-1 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

II. BACKGROUND

On December 3, 2021, in accordance with 39 C.F.R. § 3035.105 and Order No. 546, the Postal Service filed its Notice, along with supporting documents. See *id.* at 4-5. The Postal Service notes that the FPO-USPS Agreement FY22-1 provides rates for inbound tracked packets. *Id.* at 6. In the Notice, the Postal Service asserts that the FPO-USPS Agreement FY22-1 is functionally equivalent to the baseline agreement for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and requests that the agreement be added to the existing Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 3-4. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, the FPO-USPS Agreement FY22-1, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. *Id.* at 5. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the FPO-USPS Agreement FY22-1, customer-identifying information, and related financial information remain under seal. *Id.* Attachment 1.

The FPO-USPS Agreement FY22-1 is intended to take effect on January 1, 2022. Notice at 1, 5, 9; *id.* Attachment 2 at 1. It is set to expire on December 31, 2022. Notice at 5; *id.* Attachment 2 at 3.

On December 7, 2021, the Commission issued a notice establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.² On December 10, 2021, Chairman's Information Request No. 1 was issued, with questions filed under seal.³ On December 17, 2021, the Postal Service filed its response to CHIR No. 1 under seal.⁴

III. COMMENTS

The Public Representative filed comments on December 10, 2021.⁵ No other comments were received. Based upon a review of the Postal Service's Notice and supporting documentation, the Public Representative concludes that the FPO-USPS Agreement FY22-1 is functionally equivalent to the baseline agreement. PR Comments at 2. The Public Representative also finds that prices in the FPO-USPS Agreement FY22-1 should generate sufficient revenues to cover costs and therefore meet the requirements of 39 U.S.C. § 3633(a). *Id.* at 3. For these reasons, the Public Representative recommends the Commission approve the addition of the FPO-USPS Agreement FY22-1 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

² Notice and Order Concerning Postal Service Filing of Inbound Competitive Multi-Service Agreement with Foreign Postal Operator – FY22-1, December 7, 2021 (Order No. 6053).

³ Chairman's Information No. 1 and Notice of Filing Under Seal, December 10, 2021 (CHIR No. 1).

⁴ Responses of the United States Postal Service to Questions 1-2 of Chairman's Information Request No. 1, December 17, 2021 (Response to CHIR No. 1).

⁵ Public Representative Comments on Postal Service Notice of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator – FY22-1, December 10, 2021 (PR Comments). The Public Representative filed an errata resolving an erroneous reference to FPO-USPS Agreement FY22-2, rather than FPO-USPS Agreement FY22-1. See Notice of Errata, December 21, 2021.

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the FPO-USPS Agreement FY22-1 is functionally equivalent to the baseline agreement established for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3035.105 and 3035.107).

Functional equivalence. In Order No. 546, the Commission added the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list and established a baseline agreement for assessing the functional equivalence of future agreements proposed for inclusion within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.⁶

The Postal Service asserts that its filing demonstrates that the FPO-USPS Agreement FY22-1 is functionally equivalent to the baseline agreement, and requests that the agreement be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 3. It asserts that the FPO-USPS Agreement FY22-1 fits within the Mail Classification Schedule language for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 4-5. The Postal Service also asserts that the FPO-USPS Agreement FY22-1 and the baseline agreement are materially similar with respect to products and cost characteristics. *Id.* at 7. The Postal Service identifies differences between the FPO-USPS Agreement FY22-1 and the baseline agreement, but asserts that these

⁶ See Order No. 546 at 9. The agreement was with Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV. *Id.* at 1-2. See *also* Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No.10-3), August 6, 2010; Docket No. CP2011-69, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 7, 2011, at 5 (Order No. 840).

differences do not affect the fundamental service being offered or the fundamental structure of the agreements.⁷

The Commission has reviewed the Postal Service's reasons for asserting that the FPO-USPS Agreement FY22-1 shares similar cost characteristics with the baseline agreement, meets the pricing formula, and falls within the classification established in the Governors' Decision authorizing this product. It also has considered the Public Representative's comments.

The Commission concludes that the FPO-USPS Agreement FY22-1 is functionally equivalent to the baseline agreement and that the differences between the two agreements do not fundamentally alter either the service the Postal Service will provide under the FPO-USPS Agreement FY22-1 or the structure of the FPO-USPS Agreement FY22-1. The Commission therefore finds that the FPO-USPS Agreement FY22-1 may be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

Cost considerations. The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3035.105 and 3035.107. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, Response to CHIR No. 1, and the Public Representative's comments. Based on this review, the Commission finds that the FPO-

⁷ *Id.* at 7-8. Differences include, among others, revisions to negotiated prices for inbound tracked packets, revisions to existing articles and attachments, and inclusion of new articles and annexes. *Id.*

USPS Agreement FY22-1 should cover its attributable costs. The addition of the FPO-USPS Agreement FY22-1 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should not cause cost coverage for the product to fall below 100 percent. Consequently, the Commission finds that the addition of the FPO-USPS Agreement FY22-1 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the FPO-USPS Agreement FY22-1 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to cover its attributable costs, the Commission concludes that the addition of the FPO-USPS Agreement FY22-1 to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds the addition of the FPO-USPS Agreement FY22-1 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the FPO-USPS Agreement FY22-1 indicates it is consistent with section 3633(a). The Commission will review the cost coverage of the FPO-USPS Agreement FY22-1, the cost coverage of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The intended effective date of the FPO-USPS Agreement FY22-1 is January 1, 2022. Notice at 1, 5, 9; *id.* Attachment 2 at 1. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the FPO-USPS Agreement FY22-1. The agreement is set to expire December 31, 2022, unless terminated earlier in accordance with Article 9 of the FPO-USPS Agreement FY22-1. Notice, Attachment 2 at 3. If the agreement is terminated prior to

the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. The FPO-USPS Agreement FY22-1 filed in Docket No. CP2022-30 is included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective January 1, 2022.
2. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the FPO-USPS Agreement FY22-1.
3. The Postal Service shall promptly file notice of the FPO-USPS Agreement FY22-1's termination with the Commission in this docket if the FPO-USPS Agreement FY22-1 is terminated prior to the scheduled expiration date.

By the Commission.

Jennie L. Jbara
Alternate Certifying Officer

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

2500 Negotiated Service Agreements

2515 Inbound International

2515.10 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

2515.10.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-34 and CP2010-95

PRC Order No. 546, September 29, 2010

Included Agreements

FPO-USPS Agreement FY22-1, CP2022-30, expires December 31, 2022
